LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PLANNING, ENVIRONMENT AND TERRITORY AND MUNICIPAL SERVICES

(Reference: Planning and Development (Project Facilitation) Amendment Bill 2014)

Members:

MR M GENTLEMAN (Chair)
MR A COE (Deputy Chair)
DR C BOURKE
MR A WALL

TRANSCRIPT OF EVIDENCE

CANBERRA

MONDAY, 14 APRIL 2014

Secretary to the committee:
Ms M Morrison (Ph: 620 50136)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 11.04 am.

CORBELL, MR SIMON, Minister for the Environment and Sustainable Development
PONTON, MR BEN, Deputy Director-General, ESDD
CORRIGAN, MR JIM, Executive Director, Planning Delivery, ESDD
DUNSTAN, MR DAVID, Senior Legal Policy Officer, Legislation, ESDD

THE CHAIR: Welcome to this public hearing of the Standing Committee on Planning, Environment, Territory and Municipal Services into the Planning and Development (Project Facilitation) Amendment Bill 2014. The bill was referred to the committee by the Legislative Assembly on 8 April for inquiry and report by 6 May.

On behalf of the committee I would like to welcome Minister Corbell and officials from the Environment and Sustainable Development Directorate to the hearing this morning. Can I remind you of the protections and obligations afforded by privilege and draw your attention to the privilege statement before you on the table. Could you please confirm for the record that you understand the privilege implications of the statement?

Mr Corbell: Yes, thank you.

THE CHAIR: Thank you very much. Can I remind witnesses that the proceedings are being recorded by Hansard for transcription purposes and webstreamed and broadcast live. Before we continue, can I ask the minister whether he would like to make an opening statement.

Mr Corbell: Yes, thank you very much, and thank you to the committee for the opportunity to appear before you this morning. This morning I will make some brief comments about the purpose of this bill and the rationale behind it and some key elements of its operation.

It is worth highlighting that this bill was announced as part of a package of measures introduced by the Chief Minister last month to provide stimulus for the Canberra building and construction industry and was composed of a number of other elements as well as this bill, including the release of four civil contracts for estate works in Moncrieff, a number of changes and simplifications to the operation of the lease variation charge, a significant reduction in extension of time or commence and complete development fees, as well as of course this bill which is the subject of your inquiry today.

The bill has four keys parts. The first is to provide for special precinct variations to the territory plan. The second is to provide for declarations of projects of major significance. The third is to allow development applications to be lodged alongside draft variations to the territory plan. And the fourth is the lodgement of draft environmental impact statements with a development application, rather than prior to the lodgement of that application.

So just working through those issues, the bill is about providing for project facilitation.

As part of determining whether or not there should be a special precinct variation to the territory plan, the executive must consider whether or not the variation will provide, firstly, for a substantial public benefit, whether it will achieve significant implementation of either the ACT planning strategy, the sustainable development of the territory or significant economic, social, cultural or environmental objectives for our community. The declaration of a special precinct variation will permit the territory plan to meet the statutory objects of the plan, and the structure plan that is developed as part of that process must be consistent with the statement of strategic directions outlined in the ACT planning strategy.

The project facilitation and special precinct variation process involves extensive public consultation, and it is wrong to characterise this as not permitting that process to occur. In the first instance, to establish that project facilitation process and special precinct variation, the minister must give a direction to the Planning and Land Authority. There must be a minimum of 30 days public consultation in relation to that process. There is a mechanism then for executive—that is, cabinet—review of the feedback provided through the Planning and Land Authority to the executive from members of the community. Then of course there is a Legislative Assembly consideration process where, if that declaration is made, it is subject to veto in the Legislative Assembly through a disallowance process.

In relation to the effect of that special precinct declaration, it is worth highlighting that the plan variation provides for a variation to the territory plan to happen in a much quicker way than the standard process. The estimate is approximately a two-month process instead of between six and 18 months. It provides for public consultation on that variation of 20 days. The bill proposes to remove ACAT merit review of development applications, and there are also restriction declarations that can apply.

I will turn to those now. The two elements relate to the operation of the Heritage Act and the Tree Protection Act. In relation to heritage restrictions, these restrictions are optional and are declared by the executive if they are believed to be warranted. And they are of course subject to disallowance in the Legislative Assembly. They relate to areas that are nominated but not yet determined by the ACT Heritage Council. In relation to sites that are nominated but not yet determined by the Heritage Council, the council is invited to provide comments to the executive in relation to those matters. Those comments would have to be provided to the Legislative Assembly in the instance that the declaration made by the executive chose not to include nominated sites as part of the declaration.

The Heritage Act would not then apply to DA decisions, and the Heritage Council would not be able to process applications. It does not affect those sites which are already declared heritage sites and which are listed on the ACT heritage register. Those protections remain in effect.

A similar approach is adopted in relation to tree protection and the operation of the tree protection legislation. Again, it is discretionary on the part of the executive as to whether or not the tree protection provisions should apply for nominated trees—

Mr Corrigan: Regulated trees.

Mr Corbell: I beg your pardon, regulated trees. Again, the conservator must provide comments in relation to the proposal. Those comments must be made available to the Assembly. And again, this provides for the Assembly to decide whether or not the operation of the tree protection legislation should apply in those instances.

I would like to turn now to the operation of the bill in relation to the ACAT and the Administrative Decision (Judicial Review) Act. The government proposes that there be no ACAT merit review on any development application for a project that is assessed under projects of major significance. This is not dissimilar to, in fact it is the same as, the operation of the Planning and Development Act currently when it comes to decisions made by the minister, the so-called call-in power provisions.

There is no ACAT merit review in relation to those decisions, and it is proposed that it be the same in relation to this mechanism. The rationale for that is that, if the executive and consequently the Assembly consider that a declaration of a project of major significance is warranted and it is not disallowed on the floor of the Assembly, then that is giving an indication as to the priority and the significance of the project and that issues around merit review should not come into play.

Similarly in relation to the Administrative Decision (Judicial Review) Act, at the moment in relation to the operation of the call-in powers, as a comparison, decisions made by the minister using call-in powers are subject to AD(JR), and there is an example of that currently occurring in relation to the litigation that surrounds my decision to call in and approve the redevelopment of the Giralang shops. Whilst that is clearly not a project of the territorial significance type, it nevertheless highlights how AD(JR) currently operates in relation to call-in powers. The government believes that the use of AD(JR) can be exploited by those who are opposed to particular projects, often on commercial grounds—and we certainly see that in relation to the Giralang litigation—and therefore we propose not to provide for the operation of AD(JR).

We do, however, accept that the Supreme Court of course has an inherent jurisdiction under common law to consider appeals on decisions, and we propose that in relation to those other legal proceedings there should be a set period within which those actions should be brought, and the bill proposes that such actions should be brought within 60 days.

Finally, in relation to the projects facilitation, projects of major significance, during that public consultation process I outlined the process for executive and cabinet consideration and also Assembly consideration. It is worth highlighting some of the matters that will have to be disclosed in that declaration, including the identification of the land in question, the duration of the declaration—the declaration is for a set period, its justification against the criteria I have outlined, and the likely assessment track that will apply within the territory plan and the broader time frames.

I will now highlight two other elements of the bill. The first is that it provides for DAs to be lodged with a draft territory plan variation, and this contrasts with the current process where the territory plan must be formally varied before a development application can be lodged for a site subject to that variation. The government believes there are significant benefits in this approach, primarily in terms of information to the broader community.

At the moment it can be very difficult for people in the broader community to understand what is proposed on a particular site solely from viewing a draft variation to the territory plan, because that variation provides for the overall zoning control, height, plot ratio control if there is one, setbacks, so on and so forth, but it does not actually demonstrate what the built product may be on that site. And often it is difficult, I think, for members of the community to fully understand what a zoning change means in practice in terms of what the building could potentially look like on the ground.

So to provide for a development application to be lodged at the same time as a draft variation is initiated and put out for public commentary, I think, gives more information to the community about what is proposed on the site, including the built outcome as well as the zoning change. This is an optional process but one that has benefits in terms of timeliness but also in terms of better information to the community.

There is provision for a draft environmental impact statement to be provided with a DA. This, again, is a time-saving measure. At the moment you can only proceed with a DA once the environmental impact assessment process is complete. By allowing them to run concurrently, again both the Planning and Land Authority and the broader community can see how one takes account of the other, and vice versa, and also saves the proponent time in being able to submit both matters concurrently. The EIS must still be completed before a DA is granted, and the EIS must still address all of the issues that are currently required under territory law.

That is a general overview of the operation of this bill. The bill is an important one, and I will just make a couple of observations about other jurisdictions, in concluding. Most other jurisdictions around the country have a project of territory significance or state significance-type framework in place to give priority to particular types of development. For example, there are mechanisms within planning law in New South Wales that provide for these types of declarations to be made and for streamlining around decision-making and rights of review to be put into effect. Most other jurisdictions as well as New South Wales have them. The ACT has been distinct in not having these types of provisions in its planning law to date.

There are, I think, though, some comparisons worth making in relation to the ACT proposal and the operation of projects of state significance, to call them that, in other jurisdictions. The first is that in the ACT the government proposes that all such declarations are subject to veto by the parliament. That is not the case in New South Wales, nor is it the case in other jurisdictions, as far as I am aware, and this is a level of accountability and transparency that I think is appropriate for legislation of this type.

These are powerful laws—there is no doubt about that—and they should only be exercised where a majority of the elected members of the Legislative Assembly agree that the declaration is appropriate. That, I think, is a very important check in relation to the operation of these laws, compared to the operation of these laws in other jurisdictions, where it is solely the declaration of the minister or the cabinet but without any parliamentary oversight.

The second point that is worth highlighting is that these laws do not in any respect grant any new powers in terms of in-principle operation of the act compared to what currently exists, and by that what I mean is that currently the Planning and Development Act provides for either the minister or the Planning and Land Authority to determine a development application. Those heads of power are effectively unchanged. The mechanisms are speeded up, but those heads of power are effectively unchanged. As is the case now, either the Planning and Land Authority or the minister can determine a development application.

The third point to be made is that when it comes to decisions about zoning, it has always been the case, for as long as we have had the territory plan, that decisions about zoning are made by the elected representatives of this place. They have never been made and determined by the Planning and Land Authority. They have been determined by the elected representatives of this place. That is how the territory plan operates now, and that is how the territory plan would continue to operate under these laws, albeit within a speedier time frame.

With that, I will be happy to try to answer your questions.

THE CHAIR: Thank you very much, minister. If I could just go to two new operational parts of this bill, special precinct variations and special precinct areas, can you explain to the committee how they will operate?

Mr Corbell: I might ask my officials to elaborate on the detail of that.

Mr Corrigan: The special precinct variation declaration process would enable the government, if the precinct is declared through the disallowance process that the minister has outlined, to foreshadow changes to the territory plan to be made—it has that fancy title in the bill, the special precinct area variation—so that any subsequent change to the territory plan would then take effect as had been proposed.

Within the precinct, once flagged through the structure plan that would accompany the disallowance instrument, if it foreshadows further territory plan variations, it would also outline those, and they can be done through the declaration process as well by technical amendment. That is, in effect, what the special area precinct variation refers to.

THE CHAIR: And that cannot be done currently?

Mr Corrigan: The territory plan can be changed now, as the minister has outlined, but it goes through its normal process. What this does is allow the government to, in effect, declare its hand. It is saying, "Okay, we think this precinct is very important, for these reasons," on the criteria the minister outlined before, the public benefit test and those sorts of things. It declares its hand and says, "Okay, in this precinct we think it is important to amend the territory plan to change it to allow a certain outcome."

In addition, of course, as the minister outlined, there would be no third-party review from then on in that precinct for subsequent DAs that would be lodged and assessed

by the Planning and Land Authority under the existing arrangements. Yes, that is it essentially.

THE CHAIR: And my other question was about the relationship of this with your dealings with the NCA. Does that change at all?

Mr Corrigan: No, it does not. We still are required to consult with the National Capital Authority.

DR BOURKE: Minister, how do you deal with criticism that private developers have to negotiate a complicated planning system but you are changing the rules for government developments?

Mr Corbell: This is about projects that are of broad and significant benefit to the community. They are more likely to be projects which are delivered by government agencies as a result or which are planned by government agencies. For example, they could relate to public transport infrastructure, they could relate to large-scale redevelopment of public facilities, hospitals, schools—those other types of projects that have significant and broad-ranging public benefit.

I think it is worth highlighting that this legislation is not, though, specific to the public sector or the private sector, and indeed the private sector is often involved, as we know, in the delivery of our public projects. Equally, the private sector may take the lead on development of projects which are of significant public benefit.

That is the overriding objective. Is it development which occurs in the normal course of events in the city or is it development that has broader benefits that are above and beyond business as usual? And that is really why this legislation has been developed. That can apply and be of benefit both to private sector projects as well as public sector projects. It will often be the case that projects of significant public benefit, substantial public benefit, will have components of both public and private engagement.

DR BOURKE: So what you are saying, minister, is that the improvements in the bill will benefit private developers?

Mr Corbell: What I am saying is that they will benefit projects that have substantial public benefits and that those projects are likely to engage both the private sector as well as public sector agencies.

DR BOURKE: And just as a second part to that, what are the unnecessary delays in the environmental impact assessment process you have identified?

Mr Corbell: The issue is really one of running processes sequentially rather than concurrently. At the moment that process is run sequentially—the EIS has to go from beginning to end before a DA is lodged—and that obviously adds time, quite a substantial period, to the process. If a DA can be prepared at the same time an EIS is being prepared, if they can be lodged together, if they can be considered together and then a decision made on the EIS before a decision is made on the DA, then that provides for a more efficient use of time. And we know that time is of critical importance in relation to many of these projects.

This is a provision that will apply across the board. It will not relate to the declaration process. So it will be a mechanism available, an optional mechanism that is available for all proponents.

MR COE: Minister, you have referred on a few occasions to the Assembly or the parliament's involvement in this. The Assembly's involvement is very limited and is dependent upon a disallowance motion being brought before the Assembly. Have you considered actually bringing any such declaration before the Assembly seeking a positive affirmation from the Assembly rather than simply a negative vote? If so, would there be merit in entrenching in the bill a special majority such as two-thirds for any such declaration to get up?

Mr Corbell: In relation to the disallowance process as opposed to a positive affirmation, as you describe it, the government has chosen to follow the precedent that already sits in the Planning and Development Act and has been in place for all territory plan variations since self-government, which is decisions on territory plan variations are the responsibility ultimately of the executive but they are subject to veto by the Legislative Assembly.

We think that mechanism has worked well in the past. It provides for a majority of members of the Assembly to reject a territory plan variation if they believe it is not warranted. That has occurred only on a very small number of occasions during the history of self-government, but it has occurred. And it also recognises the fact that the history of self-government is overwhelmingly one of minority government. There has only been one instance where there has been a majority government, where a single party has had a majority on the floor of the Assembly. So the disallowance mechanism has proven to be a very effective one in terms of cautioning the executive about how far it can go, because—

MR COE: When was the last time something was disallowed in the Assembly?

Mr Corbell: I think the last time a variation to the territory plan was disallowed was in relation to the Federal Golf Club in about 2000. So it is a rare instance. But the fact remains that the governing party has traditionally had a minority on the floor, and it relies on the support of others for passage of legislation and for matters around disallowance to be resolved. So that is an important check.

In relation to special majority, no, the government has not given consideration to special majority. We do not believe special majority is warranted. Special majorities tend to be reserved for a very small number of matters. Indeed, the only special majority provisions relate exclusively to electoral matters such as the size of the Assembly and the operation of the electoral law.

MR COE: This government is well known for doing things for the first time, whether they be in the ACT or across other jurisdictions. If you were serious about trying to take the politics out of any declaration, would there not be merit in seeking a two-thirds vote in the Assembly to therefore prove to the territory that what you are proposing truly is something of significance and is recognised as such by most, if not all, the parties in the Assembly?

Mr Corbell: No, I do not think so. The Assembly deals with a whole range of things that are contentious every day of the week, but there are certain matters where it is important to ensure there is a very high level of consensus across all political parties. The special majority provisions have been put in place to deal with that in the context of the operation of the electoral law so that no one party, or indeed even a combination of one large party and one small party, can act to devise the electoral law to the disadvantage of other parties. I think it is in those very limited circumstances that the operation of a special majority should apply, not more broadly to matters that may be contentious but simply do not meet the threshold that matters like electoral law do.

MR COE: And finally from me, what consultation have you had with the Heritage Council about this bill?

Mr Corbell: The Heritage Council have been briefed by my directorate in relation to the detail of the bill, and they have provided comments directly to my directorate. They have also provided comments to me.

MR COE: On what date were they briefed?

Mr Corbell: They were briefed, as I understand it, on the date the bill was introduced, or near to it.

MR COE: Not consultation but a briefing?

Mr Corbell: Yes, they were briefed on the detail of the bill. That is right, they were consulted on this bill.

MR COE: How was their input taken into consideration by the bill?

Mr Corbell: Their input is taken into consideration by the government as we look at the process through the Assembly itself and the detail and debate on the bill.

MR COE: Were any changes recommended by the Heritage Council or commentary made by the Heritage Council? Did any of those changes result in any redrafting of the bill which was presented to them?

Mr Corbell: Not prior to its introduction, and the reason for that was that the government took the decision to expedite the introduction of this bill following the resolution of the Assembly itself, which asked for expedition of approvals and development of the secure mental health facility in Symonston. So that is why this bill was brought forward in the time frame it was brought forward. However, having regard to the commentary and comments that we have received from the Heritage Council and others, the government has always said we are open to making adjustments to this legislation. And obviously we are looking at those issues currently.

MR COE: You said that you had not made any changes prior to introduction. Given last week you sought to have the bill voted upon, you obviously did not have any amendments which were suggested by the Heritage Council. Have you now got any

amendments suggested by the Heritage Council to this bill?

Mr Corbell: There have been very few comments in relation to this bill following its introduction and prior to its debate until about—

MR COE: There was not a huge amount of time, was there?

Mr Corbell: Nearly a month.

MR COE: From the 20th to the 10th.

Mr Corbell: Not an unreasonable period.

MR COE: Less than three weeks.

Mr Corbell: The government made substantial public announcement about the bill. It is on the public record. The justification for the bill was outlined by me and other ministers publicly. So it is not a matter of hiding the bill. We have been very upfront about its intent, its purpose and its detailed provisions. But we, of course, remain open to looking at issues that stakeholders raise. That is certainly the case in this instance as it is in any other instance. The Heritage Council, as I understand it, have raised a number of matters around the operation of areas of special declaration, particularly in greenfield estates, and those are matters that the government is looking further at.

MR COE: Are you working on an amendment?

Mr Corbell: We are looking further at their comments at this point in time. It would be pre-emptive of me to say whether or not there will be amendments worked on.

MR COE: Given you just said that there was plenty of time between the tabling and the debate on the bill, why did you not put forward an amendment in the meantime which took into account the Heritage Council's consideration?

Mr Corbell: Because they only made those comments to me in the last week or so.

MR COE: And when did they make them to your directorate?

Mr Corbell: I am not sure whether they made the same comments to my directorate, but the advice to me from the Heritage Council members was in the last week to two weeks.

MR COE: And given you have got your officials with you, when were recommendations or commentary given by the Heritage Council to the directorate about the bill?

Mr Ponton: I might comment on that. In the development of the bill we did talk to the Heritage Council secretariat, and as a result of those conversations we did add the provision that relates to seeking the advice of the council and having that advice included with the disallowable instrument that is tabled in the Assembly. So that was on the advice of the secretariat itself.

After the government announced the bill and it was tabled, there was no direct contact from the council itself to the directorate. I then contacted the chair and asked whether the chair would like the briefing, given that the council had not made that direct contact with us, and we then briefed them on—it was—

Mr Corrigan: It was the Thursday before.

Mr Ponton: The Thursday before last. And in terms of the concerns or the particular matters—I would not necessarily call them concerns—in terms of the way the bill will operate, those comments were made to us in the last week or so.

Mr Corbell: Overall, the Heritage Council have told me that in their view they do not oppose the introduction of this legislation but they believe that some refinements should be considered, in particular as they relate to greenfield sites.

Mr Ponton: Another important thing—and the minister talked earlier about the fact that many of the provisions in the act already exist—in relation to both heritage and trees, is that the Chief Planning Executive in considering a development application now can act inconsistently with the advice of the council or the conservator. That happens at the end of the process, once the DA has been publicly notified and considered. What this does is makes that process arguably more transparent by putting it up front, saying that we think that this will be an issue.

The government has been quite upfront—and the term that has been used is "shows its hand"—in relation to this project of particular importance, heritage and/or trees. We believe that a declaration needs to be made, but the important thing is that those powers already exist to act inconsistently with the advice of the council.

MR WALL: Minister, you have said that the introduction of this legislation is part of the government's stimulus program. When will it be repealed?

Mr Corbell: It is not proposed to be repealed. It is proposed to be ongoing legislation. But it is part of a suite of measures to provide greater confidence to the building industry. Some of those measures are short term and some of those measures are ongoing.

MR WALL: You just said, in your own words, that stimulus measures need to go above and beyond the usual course of business. If this becomes the usual course of business, then what options does that leave for the purpose of stimulus?

Mr Corbell: As I just said, some stimulus measures are short term and some are ongoing.

MR WALL: As far as the call-in powers that stand currently are concerned, will they remain in force or will it be sought to change, alter or repeal them?

Mr Corbell: The government is not proposing any repeal of call-in power provisions. The effect, though, of this legislation will be to significantly reduce, in my view, the number of instances where a minister would be asked to exercise a call-in power. The

criteria for the use of the call-in power are also set out in the legislation. They are different from the criteria used to determine whether or not a declaration of a special precinct should occur. And there will be some instances where a call-in may be warranted because they do not meet the criteria for a special precinct but they nevertheless meet the lower thresholds that exist for call-ins. So they are designed to deal with different circumstances, and one complements the other.

MR WALL: Likewise a scenario could arise where a development application is disallowed by the Assembly, yet you as minister would still retain the power to use your call-in on the DA?

Mr Corbell: Development applications cannot be disallowed by the Assembly.

MR WALL: Even if they form part of the special precinct? So it is something that—

Mr Corbell: No, not development approvals, the territory plan variation process.

MR WALL: So only the territory plan variation?

Mr Corbell: Only the territory plan variation process.

THE CHAIR: Minister, could you take us through how the declaration process will work?

Mr Corbell: For precincts?

THE CHAIR: Yes.

Mr Corbell: I might ask Jim or David.

Mr Corrigan: In practice, if the government was looking at an area where it would need to seek a certain outcome that may vary the territory plan and take up third-party review, it would consider that. The minister would in fact ask the Planning and Land Authority to prepare that information, and obviously it would brief the minister around that. The Planning and Land Authority would then prepare the draft package of information for the consultation process. That involves a minimum 30 working days. That is the same period that is currently required for territory plan variations.

With a precinct, it is the declaration instrument that needs to declare what is going to be in it. So obviously if heritage or trees are an issue, that would be shown up. It is also to be accompanied by what we call a structure plan that shows the planning intent. So any changes to the territory plan would be highlighted with that. That is all consulted. At the same time, if heritage and/or trees are an issue to be considered in that precinct, the bill requires that we consult the Heritage Council and/or the Conservator of Flora and Fauna for trees. Those comments come back, very similar to a territory plan variation now. We receive all those comments back.

We would prepare what we call a consultation report, and the committee may probably remember these from time to time when territory plan variations come to you. We prepare that and also include the comments from the conservator and the

Heritage Council. That package is then supplied to the executive, in this case the executive being the government. They will consider that, and then if they are satisfied to move forward, they would seek to then table that package in the Assembly as a disallowance instrument. The bill also requires the comments of the conservator and/or the Heritage Council to be tabled with the consultation report and the disallowance instrument.

Mr Corbell: And it is worth highlighting that of course the disallowance period is the normal period of six days.

Mr Corrigan: Actually, it is. It is interesting. The disallowance period is the normal disallowance period that applies generally. So it is "table and six days". A normal territory plan variation is "table and five days". It is interesting. So we are going with the normal disallowance period. There is actually one extra day for the Assembly to consider the proposed declaration.

Mr Corbell: So in effect, that is actually a period of a couple of months in practice, unless you have effectively three sitting weeks in close succession. You have got probably a month, up to two months, of the proposal sitting on the table for it to be subject to scrutiny by members and the broader community prior to the disallowance period expiring.

Mr Dunstan: If I could add just a footnote to the description of the special precinct area process in terms of the content of the special precinct area variation, the content will also include any territory plan variations that might be needed to give effect to the structure plan that will be part of the special precinct area variation. For example, there could be a variation to permit a different range of uses within the special precinct area, and those variations will take effect the moment that the special precinct area variation takes effect.

But I think it is also perhaps important to keep in mind that the declaration of the special precinct area will, in itself, create an ability to do what are called special amendments to the territory plan for the future within that special precinct area. That process will allow future variation to the territory plan as it applies to the special precinct area through a 20-day consultation process, similar to the technical amendment process that we already have in the act. So it allows for variations to happen at the time of the special precinct area variation but it also allows, should the need arise or future issues arise within the special precinct area, for future territory plan variations to be made through that process.

DR BOURKE: Minister, could you outline what the human rights implications may be in declaring special precinct areas and how that might be affecting the right of appeal in civil matters?

Mr Corbell: There is a limitation in relation to the right to seek review of a decision through the courts. That is a limitation on people's rights, and the government believes, though, that that limitation is proportionate to the extent necessary to provide certainty for decision-making on major projects.

It is worth highlighting that the purpose, of course, underlying this legislation is to

give clear certainty and clear time frames around decision-making on whether or not certain projects are able to proceed. Whether that be for the provision of essential public infrastructure, the provision of infrastructure that provides broad public benefit, private development that has significant economic benefit and therefore broader benefit to the community—they are the types of matters that would need to be taken into account in deciding whether or not that subsequent restriction on merit review and appeal through the Administrative Decisions (Judicial Review) Act is warranted. The additional check on that, of course, is that the Assembly itself can decide whether or not it agrees with such a declaration through the disallowance process.

This is a mechanism that does not exist in any other jurisdiction, to my knowledge. In other jurisdictions, in New South Wales for example, the minister for planning can declare a matter of state significance. It is not determined by local councils then. It is determined by the Planning Assessment Commission panel in New South Wales. Decisions of that panel are not reviewable in relation to those declarations, and therefore certainty is given to those projects as well in terms of decision-making. But there is a limitation on rights.

Here in the ACT, such a limitation would only take effect if the proposal was not disallowed by the Assembly. And that stands in marked contrast to what happens in other jurisdictions as a matter of course in relation to significant projects.

DR BOURKE: Minister, the bill is creating a lot of exemptions for major developments. Is it fair to say this is identifying a whole bunch of red tape which maybe should be done away with for all developments?

Mr Corbell: No, I do not accept that. The purpose is to provide for priority for projects that meet that threshold of the criteria set out for declaration by the executive, and that threshold is deliberately set at a very high level. It talks about substantial public benefit. It talks about projects that will provide that substantial public benefit and will progress the ACT planning strategy, the sustainable development of the territory or meet other territory economic, social, cultural or environmental objectives. So it is deliberately set at quite a high threshold.

These assessments are always subjective. Nevertheless, it will not be solely within the hands of the executive to determine whether or not such a declaration will stand. It will also sit with all the elected members of this place.

MR COE: To me, the simultaneous lodgement of DAs and territory plan variations seems like a very complex process, especially for the community. If they were in fact one decision, I could understand the synergy. Given they are still two distinct decisions, if somebody makes a comment on a proposed territory plan variation, "I do not like what is proposed in the DA, it looks awful, therefore I do not want it to happen," that is not particularly relevant to a territory plan variation, which is primarily about land use.

The flipside could be so as well. They do not actually mind the development application. However, all the other things which are allowed in the territory plan may well be not supported. What is the rationale, and how is it in fact simpler for the community to have the territory plan variations and development applications lodged

at the same time?

Mr Corbell: I think the issue you raise highlights the benefits of running the processes separately but concurrently so that people can comment on the DA, people can comment on the draft territory plan variation and they can do so at the same time. They have before them not just information about the land use zoning, which may not demonstrate in the same way a development application would what the actual built outcome is going to look like in detail, but it is just so—

MR COE: But the DA may not go ahead.

Mr Corbell: No, it may not. But that is entirely appropriate. That is why it is an optional process, first of all. There are risks associated with lodging your DA at the same time as a draft variation to the territory plan is considered. The draft variation is not supported, and therefore you have wasted your time on the DA. And that is why it is an optional process. But we know it is a process that is welcomed by the development sector because it allows them to streamline the preparation of their documentation and bring it forward concurrently.

I argue, and I think the experience of the Planning and Land Authority backs this up, that it actually helps people to understand what a draft variation to the territory plan means in practice if they are able to see a DA. And a good example of this is the variation that the Assembly process has just completed in relation to the ABC flats site. There we have had a rezoning, but we have not had before us a DA that outlines at that very high level of detail what the built outcome is going to be on the ground as a consequence of the territory plan variation.

I would say to the committee that if there had been a detailed DA in front of members of the community at the same time as they were able to see the draft variation to the territory plan, that would have assisted the community in understanding what the final outcome was proposed to be on the ground, and then that would help them to decide whether or not the zoning proposals were appropriate or not in terms of their commentary.

In relation to the risk of a territory plan variation not proceeding, the point I would make is that it is appropriate that the question of whether or not the territory plan variation is to proceed or not be decided first, because otherwise you would be in the situation where a DA is granted on a draft variation which perhaps does not go ahead. And we cannot be in that situation. So there still needs to be a clear order of decision-making, and that is the processes run concurrently. People can comment on both. They might like elements of the DA. They might like elements of the territory plan advice or they might not. They are able to comment on each individually but each informed by the other, and then a decision is made on the draft variation through the standard process if it is not subject to declaration. Then a decision is made on the DA subsequently.

But we know that the private sector welcomes this change because it speeds up the process overall for them. It reduces waiting. It reduces waste of time. And it certainly is of benefit to the community in terms of the amount of information that is available about a proposed change.

MR COE: It seems to be doing away with the planning hierarchy with regard to land use.

Mr Corbell: No, not in any way.

MR COE: If you were committed to having this ability to allow a particular DA that may not be consistent with the existing territory plan, why does not the bill have a conditional component that the territory plan is conditional upon the DA being approved rather than actually being separate?

At present, for instance if there is an old school site in a suburb and a DA goes in at the same time as the territory plan variation to change it, the community says, "That is a great DA. Let us roll with both of them." The DA gets approved. The territory plan gets approved. The DA does not actually eventuate in terms of the building. The territory plan has then been varied. At that point numerous other uses are then allowed for that old school site and a new building is constructed which is totally, it seems, at odds with the old DA and what the territory plan was changed to specifically allow. What is there to stop that scenario happening?

Mr Corbell: Nothing compared to what happens now anyway. That is what happens now anyway. At the moment the territory plan is varied to provide for a range of uses and then a DA is lodged. We know, in practice, often rezoning is put forward on the basis of a specific development proposal, whether it is from the private sector or from a government agency. But the DA is not declared until after the territory plan variation is, in terms of it being shown to the community in any specific detail, until after the draft variation is complete. So the risks you highlight can occur now, under the existing process. And—

MR COE: So what are the benefits now then?

DR BOURKE: A specific example of that, minister, is Fernhill park in Bruce, in Thynne Street, where the zoning was changed to allow a particular development which—

MR COE: A commercial development.

DR BOURKE: A height restriction was changed, and then residents were quite upset when there was a DA put in for a residential development, which did not eventuate because of other things that happened commercially.

Mr Corbell: What I would say is that territory plan variations should stand or fall on their own merits. They may be informed by a specific development proposal, but ultimately they stand or fall on their own merits. If a decision is made to rezone, it is made for good reasons that are not just about particular development; they stand because it is the right decision in relation to land use.

MR COE: But is it not potentially quite misleading for the community to have a DA and a territory plan with the DA, with no guarantee that the DA will go ahead?

Mr Corbell: There is no guarantee any DA goes ahead anyway.

MR COE: So therefore why are we changing the system? Why are you proposing to change the system?

Mr Corbell: The only thing we are changing is the time frames so that the matters are dealt with—

MR COE: So why is it required?

Mr Corbell: To answer your question, as I have said, what we are changing in relation to this aspect of the bill is the period within which these matters can be deliberated upon and dealt with. Rather than going for six or 18 months in the territory plan variation and then another six to nine months beyond that in relation to a development application, you do them together. So it is a shorter period.

It is that old issue that time is money. We know that is the case particularly in the construction sector. So it is simply about providing for that process to be dealt with in a shorter period, but it is exactly the same process as applies now. Development approval is a time-limited right that is usually executed by the proponent once they have received it, but sometimes is not. And there is no change in relation to that, compared to the current system and what is proposed.

MR COE: It seems to me that the DA is potentially a smokescreen by which people would get fixated on the DA and the artist's impressions and would put less time and consideration into the territory plan variation which ultimately has a far greater likelihood of impacting the community than would the DA.

Mr Corbell: I argue it is the reverse. My argument, the government's argument, is that if people see specifics of the proposal—

MR COE: Which may or may not go ahead.

Mr Corbell:—which may or may not go ahead, like any other DA, along with the rezoning, that helps inform them. But as I have said, the specifics of a rezoning, a territory plan variation, have to stand or fall on their own merits.

THE CHAIR: Thank you, minister and officials, for coming along today. Our time is up. That concludes today's proceedings. A copy of the transcript will be available on the committee's web page in a few days time, and we will send a copy to today's witnesses to check on any typographical or other transcription errors. The hearing is now adjourned.

The committee adjourned at 12.01 pm.